

June 6, 2016

Monet Vela
Office of Environmental Health Hazard Assessment
P. O. Box 4010
1001 I Street
Sacramento, California 95812-4010

RE: 15-Day Notice of Modification to Text Of Proposed Regulation – Title 27, California Code Of Regulations, Proposed Repeal Of Article 6 And Adoption Of New Article 6, Proposition 65 Clear And Reasonable Warnings

Dear Ms. Vela:

The National Marine Manufacturers Association (NMMA) is pleased to provide the Office of Environmental Health Hazard Assessment (OEHHA) with the following comments with respect to the notice of modification to text of proposed regulation to Article 6 in Title 27 of the Water and Toxic Enforcement Act of 1986 (Proposition 65), published May 20, 2016.

NMMA concurs with the comments submitted by California Chamber of Commerce (CalChamber) in their letter dated June 6, 2016. The revisions sent in by CalChamber help clarify the regulation, removing some ambiguities that will make compliance easier for our manufacturers and the law more effective for California residents.

In addition to the suggestions submitted by the CalChamber, NMMA requests the following modification to the Article.

Sections 25607.18(a)(1): Flexibility of Owner's Manual Labelling

NMMA asserts that Section 25601(d) enables any consumer product warning to be displayed on or with the product as long as it meets the requirements outlined in Section 25600.1(j): “written, printed, graphic, or electronically provided communication that accompanies a product including tags at the point of sale or display of a product.” As such Section 25607.18(a)(1), governing recreational vessels, should be amended to better reflect the multitude of display options.

Presently Section 25607.18(a)(1) limits the manufacturer to only three locations for a warning label in an owner's manual. This limitation contradicts the definition of “label” and “labelling” in Section 25600.1 and the label requirements for consumer products found in Section 25602. Per sections 25600.1 and 25602, the manufacturer should have the flexibility to include a warning label in the owner's manual in any location, as an insert and/or as an addendum included in the owner's manual package. Limiting the manufacturer to just three potential locations forces the manufacturer to either produce a California-specific owner's manual, or

change the universal owner's manual to comply with Proposition 65, at the expense of other needed language.

Thus, NMMA requests that Section 25607.18(a)(1) is amended to the following:

The warning is printed in the owner's manual for the specific recreational vessel, in no smaller than 12-point type enclosed in a box printed or affixed in any appropriate warning section of the manual or as an insert included with the owner's manual, and;

§ 25607.14 Engine Exposure Warnings (Except Passenger Vehicle Engines) –Methods of Transmission

NMMA continues to assert that due to the significant volume of aftermarket engine sales in the state of California, with engines being purchased by the consumer independently of the vessel and many other products like off-road vehicles, motorcycles, generators et al that Section 26507.14 should be amended to be more universally applicable. A standalone warning that encompasses diesel and non-diesel engines, simply by striking out "diesel," would better protect the consumer.

(a) A warning for exposure to engine exhaust from products other than passenger vehicle engines meets the requirements of this Article if it is provided using all of the following methods and includes the elements required in Section 25607.15.

(1) The warning is printed in the owner's manual for the specific vehicle, engine or other equipment. Such notice must be printed or affixed in no smaller than 12-point type and be enclosed in a box and appear in any other appropriate warning section and;

(2) The warning is provided on a label permanently attached to the product in a location that is easily visible to the operator of the vehicle, engine or other equipment when it is being operated, and;

(3) If other warnings or operating instructions are provided in an on-screen display, the warning is provided in that manner, using the same size and font as other operator warnings.

§ 25607.15 Engine Exposure Warnings (Except Passenger Vehicle Engines) –Content

Such a modification would also be needed in Section 25607.15, as follows:

(a) A warning meets the requirements of this Article if it is provided using the methods described in Section 25607.14 and includes all the following elements.

(1) The symbol required in Section 25603(a)(1).

(2) The word "WARNING" in all capital letters and bold print.

(3) The words: “Breathing engine exhaust can expose you to chemicals known to the State of California to cause cancer and birth defects or other reproductive harm.

- Always start and operate the engine in a well-ventilated area.
- If in an enclosed area, vent the exhaust to the outside.
- Do not modify or tamper with the exhaust system.

For more information go to: www.P65warnings.ca.gov/engines.”

Conclusion

NMMA looks forward to working with OEHHA to ensure our members continue to comply with Proposition 65. We believe that this regulation can effectively serve our members, the industry at large and the California public, but that certain clarifications need to be made to minimize any potential complications, simplify the warning process and avoid overwarning. We are open to discuss these comments further and make our members available to expand on how the regulation will impact their operations.

For additional questions, please feel free to contact me at mlewan@nmma.org or 202-737-9760.

Sincerely,



Michael Lewan
Senior Manager, Government Relations
National Marine Manufacturers Association